## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

ZURI MCCLAIN and LASHAN CASEY,	)
Plaintiffs,	)
v.	) Case No. 18-1282-EFM-GEB
RANDALL L. ROGERS, et al.,	)
Defendants.	) )

## <u>ORDER</u>

This matter is before the Court on Plaintiffs Zuri McClain and Lashan Casey's separate Motions for Leave to Proceed *In Forma Pauperis* (ECF Nos. 3 and 5, *sealed*) and supporting Affidavits of Financial Status (ECF Nos. 4, 6, and 8, *sealed*). For the reasons outlined below, Plaintiffs' Motions (ECF Nos. 3 and 5) are GRANTED.

Under 28 U.S.C. § 1915(a), the Court has the discretion<sup>1</sup> to authorize the filing of a civil case "without prepayment of fees or security thereof, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security thereof." "Proceeding *in forma pauperis* in a civil case 'is a privilege, not a right—fundamental or otherwise." <sup>2</sup> To determine whether a party is eligible to file without prepayment of the fee, the Court

<sup>&</sup>lt;sup>1</sup> Barnett ex rel. Barnett v. Nw. Sch., No. 00-2499, 2000 WL 1909625, at \*1 (D. Kan. Dec. 26, 2000) (citing Cabrera v. Horgas, 173 F.3d 863, at \*1 (10th Cir. April 23, 1999)).

<sup>&</sup>lt;sup>2</sup> *Id.* (quoting *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998)).

commonly reviews the party's financial affidavit and compares his or her monthly

expenses with the monthly income disclosed therein.<sup>3</sup>

Both the Tenth Circuit Court of Appeals and this Court have a liberal policy toward

permitting proceedings in forma pauperis.<sup>4</sup> After careful review of Plaintiffs' descriptions

of their financial resources (ECF Nos. 4, 6, and 8, sealed), and comparison of each

Plaintiff's listed monthly income to listed monthly expenses, the Court finds each is

financially unable to pay the filing fee.

IT IS THEREFORE ORDERED that Plaintiffs' Motions to Proceed In Forma

Pauperis (ECF Nos. 3 and 5) are GRANTED. Although service of process would

normally be undertaken by the clerk of court under 28 U.S.C. § 1915(d) and Fed. R. Civ.

P. 4(c)(3), the clerk is directed to stay service of process pending the District Court's

review of the Report and Recommendation filed simultaneously herein (ECF No. 11).<sup>5</sup>

IT IS SO ORDERED.

Dated at Wichita, Kansas this 3rd day of December, 2018.

s/ Gwynne E. Birzer

GWYNNE E. BIRZER

United States Magistrate Judge

<sup>3</sup> Alexander v. Wichita Hous. Auth., No. 07-1149-JTM, 2007 WL 2316902, at \*1 (D. Kan. Aug. 9, 2007) (citing *Patillo v. N. Am. Van Lines, Inc.*, No. 02-2162-JWL-DJW, 2000 WL 1162684, at \*1) (D. Kan. Apr. 15, 2002) and Webb v. Cessna Aircraft, No. 00-2229-JWL-DJW, 2000 WL 1025575,

at \*1 (D. Kan. July 17, 2000)).

<sup>4</sup> Mitchell v. Deseret Health Care Facility, No. 13-1360-RDR-KGG, 2013 WL 5797609, at \*1 (D.

Kan. Sept. 30, 2013) (citing, generally, Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987)).

<sup>5</sup> See Webb v. Vratil, No. 12-2588-EFM-GLR, ECF No. 7 (D. Kan. Sept. 28, 2012) (withholding service of process pending review under 28 U.S.C. § 1915(e)(2)(B) and Fed. R. Civ. P. 12(h)(3)).

- 2 -